

PROFESSIONAL SERVICES CONTRACT

This Contract (the "Contract"), entered into by and between _____ (the "State") and _____ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor.

The Contractor shall provide the following services relative to this Contract:

2. Consideration.

The Contractor will be paid at the rate of _____ for performing the duties herein and set forth on "**ATTACHMENT A**" attached to hereto and incorporated herein by reference. Total remuneration under this Contract shall not exceed _____.

3. Term.

This Contract shall be effective for a period of four (4) years. It shall commence on January 1 2011, and shall remain in effect through December 31, 2014. At the discretion of the State, there may be two (2) one (1) year renewals. In no event shall the term exceed a total of six (6) years.

4. Access to Records.

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors.

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits.

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the

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Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

7. Authority to Bind Contractor.

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

8. Changes in Work.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

9. Compliance with Laws.

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The

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Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
 - 1. The Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - 2. The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment.

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

11. Confidentiality of State Information.

Deleted and incorporated under Paragraph 37 (C) - Security and Privacy of Protected Health Information, Drug and Alcohol Abuse Patient Records, and Confidentiality of State Information.

12. Continuity of Services.

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
 - 1. Furnish phase-in training, and
 - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

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B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

13. Debarment and Suspension.

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

14. Default by State.

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

15. Disputes.

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor.

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- C. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
1. The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party, may submit the dispute to an Indiana court of competent jurisdiction.
 2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

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- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Employment Option.

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

18. Force Majeure.

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

19. Funding Cancellation.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. Governing Laws.

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

21. Indemnification.

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

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22. Independent Contractor.

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

23. Information Technology Enterprise Architecture Requirements.

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

24. Insurance.

- A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:
 - 1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
 - 2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
 - 3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.
- B. The Contractor's insurance coverage must meet the following additional requirements:
 - 1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
 - 2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
 - 3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above.

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The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

25. Key Person(s).

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are _____

26. Licensing Standards.

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

27. Merger & Modification.

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, except by written agreement signed by all necessary parties.

28. Minority and Women's Business Enterprises Compliance.

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and the Subcontractor Commitment submitted to the State. No changes may be made to the commitment without the written approval of the Minority and Women's Enterprises Division of IDOA.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>
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The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

29. Nondiscrimination.

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Contractor understands that the State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

30. Notice to Parties.

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

(Include contact name and/or title, name of agency, specific address.)

B. Notices to the Contractor shall be sent to:

(Include contact name and/or title, name of vendor, specific address.)

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

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31. Order of Precedence; Incorporation by Reference.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) RFS#10-40, (4) Contractor's response to RFS#10-40, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

32. Ownership of Documents and Materials.

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.

33. Payments.

This provision may be modified to stipulate the type of payment -- monthly, progress, per hour etc. Further detail can be added, such as how invoices should be submitted (for example, in triplicate, etc.).

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.
- B. The State Budget Agency and the Contractor acknowledge that Contractor is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.
- C. Invoices must be submitted to State within sixty (60) calendar days after the end of the month in which services are provided. All final invoices must be submitted to the State no later than March 1, 2015. State may elect to deny payment of any claims that are not timely submitted as required in this paragraph.

34. Penalties/Interest/Attorney's Fees.

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

35. Progress Reports.

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The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

36. Renewal Option.

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

37. Security and Privacy of Protected Health Information, Drug and Alcohol Abuse Patient Records, and Confidentiality of State Information.

A. HIPAA.

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996, Title II, Administrative Simplification (“HIPAA”), including amendments signed into law under the American Recovery and Reinvestment Act of 2009 (“ARRA”), in particular, Title XIII known as the Health Information Technology for Economic and Clinical Health Act (“HITECH”), Subtitle D, in all activities related to the contract, to maintain compliance during the term of the contract and after as may be required by federal law, to operate any systems used to fulfill the requirements of this contract in full compliance with HIPAA and to take no action which adversely affects the State’s HIPAA compliance.

Terms used, but not otherwise defined, in this Contract shall have the same meaning as those found in the HIPAA Regulations under 45 CFR Parts 160, 162, and 164.

To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor assures that it will appropriately safeguard all forms of Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under the contract. The Contractor agrees to comply with all applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State including, as required by the final Privacy and Security regulations:

1. Implementing the following HIPAA requirements for any forms of PHI that the Contractor receives, maintains, or transmits on behalf of the State:
 - a. Administrative safeguards under 45 CFR § 164.308
 - b. Physical safeguards under 45 CFR § 164.310
 - c. Technical safeguards under 45 CFR § 164.312
 - d. Policies and procedures and documentation requirements under 45 CFR § 164.316;
2. Implementing a disaster recovery plan, as appropriate, which includes mechanisms to recover data and/or alternative data storage sites, as determined by the State to be necessary to uphold integral business functions in the event of an unforeseen disaster;
3. Not using or further disclosing PHI other than as permitted or required by this Contract or by applicable law;
4. Immediately reporting to the FSSA HIPAA Compliance Office any security and/or privacy incident of which the Contractor becomes aware;
5. Mitigating, to the extent practicable, any harmful effect that is known to the Contractor and immediately reporting to the FSSA HIPAA Compliance Office any use or disclosure by the Contractor, its agent, employees, subcontractors or third parties, of PHI obtained under this

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Contract in a manner not provided for by this Contract or by applicable law of which the Contractor becomes aware;

6. Ensuring that any subcontractors or agents to whom the Contractor provides PHI received from, or created or received by the Contractor, subcontractors or agents on behalf of the State agree to the same restrictions, conditions and obligations applicable to such party regarding PHI and agrees to implement the required safeguards to protect it;
7. Making the Contractor's internal practices, books and records related to the use or disclosure of PHI received from, or created or received by the Contractor on behalf of the State available to the State at its request or to the Secretary of the United States Department of Health and Human Services ("DHHS") for purposes of determining the State's compliance with applicable law. The Contractor shall immediately notify the FSSA HIPAA Compliance Office upon receipt by the Contractor of any such request from the Secretary of DHHS or designee, and shall provide the FSSA HIPAA Compliance Office with copies of any materials made available in response to such a request;
8. In accordance with procedures established by the State, making available the information required to provide an accounting of disclosures pursuant to applicable law, if the duties of the Contractor include disclosures that must be accounted for;
9. Making available PHI for amendment and incorporating any amendments to PHI in accordance with 45 CFR § 164.526, if the Contractor maintains PHI subject to amendment;
10. In accordance with procedures established by the State, making PHI available to individuals entitled to access and requesting access in compliance with 45 CFR § 164.524 and the duties of the Contractor;
11. At the discretion of the State, authorizing termination of the Contract if Contractor has violated a material provision of this Section;
12. At the termination of the Contract, return or destroy all PHI received or created under the Contract. If the State determines return or destruction is not feasible, the protections in this agreement shall continue to be extended to any PHI maintained by the Contractor for as long as it is maintained.

Contractor will indemnify and hold the State harmless from any loss, damage, costs, expense, judgment, sanction or liability, including, but not limited to, attorneys' fees and costs, that the State incurs or is subject to, as a result of a breach of this Section by the Contractor or any subcontractor, agent or person under Contractor's control. In the event a claim is made against the State for any such claim, cause of action, liability, damage, cost or expense, the State may, at its sole option: (i) tender the defense to Contractor, who shall provide qualified and competent counsel to represent the State's interest at Contractor's expense; or (ii) undertake its own defense, utilizing such professionals as it deems reasonably necessary, holding Contractor responsible for all reasonable costs thereof. In any event, the State shall have the sole right to control and approve any settlement or other compromise of any claim brought against it that is covered by this Section.

B. Drug and Alcohol Patient Abuse Records.

In the performance of the services listed in this Contract, the Contractor may have access to confidential information concerning the disclosure and use of alcohol and drug abuse patient records. The Contractor understands and agrees that data, materials and information disclosed to Contractor may contain confidential and protected data, including confidential individual information concerning alcohol and drug abuse patient records. Therefore, the Contractor promises and assures that any such confidential data, material, and information gathered or

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disclosed to the Contractor for the purposes of this Contract will not be disclosed or discussed with others without the prior written consent of the State. The Contractor and the State shall comply with applicable requirements under 42 CFR Part 2 and any other applicable federal or state statutory or regulatory requirements. The Contractor shall immediately report any unauthorized disclosures of these records to the FSSA HIPAA Compliance Office.

C. Confidentiality of State Information.

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract. The Contractor shall immediately report any unauthorized disclosures of Social Security numbers to the FSSA HIPAA Compliance Office.

37.5 Electronic Transaction Standards Compliance.

To the extent that the Contractor conducts a "standard transaction" (as defined by 45 CFR § 162.103) on behalf of the State, the Contractor shall comply with the Transaction Standards, as may be amended from time to time, and shall provide documentation of its compliance with them, including a summary of project plans for remediation, status reports of remediation efforts, summary of test results, copies of certifications, if any, and the Contractor's statement affirming completion of all requirements. Such compliance shall be maintained at no additional cost to the State.

Contractor will indemnify and hold the State harmless from any loss, damage, costs, expense, judgment, sanction or liability, including, but not limited to, attorneys' fees and costs, that the State incurs or is subject to, as a result of Contractor's breach of this Section.

38. Severability.

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

39. Substantial Performance.

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

40. Taxes.

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

41. Termination for Convenience.

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by

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delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

42. Termination for Default.

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:
 - 1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
 - 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 - 3. Make progress so as to endanger performance of this Contract; or
 - 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

43. Travel.

No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

44. Waiver of Rights.

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

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45. Work Standards.

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

46. Prevention of Fraud and Abuse.

In accordance with 42 U.S.C. 1396a(a)(68), Contractor shall establish and disseminate, to its employees (including management), subcontractors, and agents, written policies that provide detailed information about federal and state False Claims Acts, whistleblower protections, and Contractor policies and procedures for preventing and detecting fraud and abuse. The written policies described in this paragraph may be on paper or in electronic form and must be adopted by the subcontractors and agents of the Contractor. If Contractor maintains an employee handbook, the Contractor shall provide the described information specifically in the employee handbook.

In any inspection, review, or audit of the Contractor by (or at the behest of) the State or federal government, the Contractor shall provide upon request copies of its written policies regarding fraud, waste, and abuse. Contractor shall submit to OMPP a corrective action plan within sixty days (60) if the Contractor is found not to be in compliance with any part of the requirements stated in this paragraph. If Contractor is required to submit a corrective action plan and does not do so within sixty (60) days, the state may withhold payment to the Contractor until a corrective action plan is received.

47. Assurance of Compliance with Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 and Title IX of the Education Amendments of 1972.

The Contractor agrees that it, and all of its subcontractors and providers, will comply with the following:

- A. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.
- B. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified handicapped individual in the United States shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.
- C. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.
- D. The Americans with Disabilities Act of 1990 (Pub. L. 101-336), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Justice (28 C.F.R. 35.101 et seq.), to the end that in accordance with the Act and Regulation, no person in the United States with a

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disability shall, on the basis of the disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.

- E. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681, 1683, and 1685-1686), and all requirements imposed by or pursuant to regulation, to the end that, in accordance with the Amendments, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Contract.

The Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal financial assistance, and that it is binding upon the Contractor, its successors, transferees and assignees for the period during which such assistance is provided. The Contractor further recognizes that the United States shall have the right to seek judicial enforcement of this assurance.

48. Conveyance of Documents and Continuation of Existing Activity.

Should the Contract for whatever reason, (i.e. completion of a contract with no renewal, or termination of service by either party), be discontinued and the activities as provided for in the Contract for services cease, the Contractor and any subcontractors employed by the terminating Contractor in the performance of the duties of the Contract shall promptly convey to the State of Indiana, copies of all vendor working papers, data collection forms, reports, charts, programs, cost records and all other material related to work performed on this Contract. The Contractor and the Office shall convene immediately upon notification of termination or non-renewal of the Contract to determine what work shall be suspended, what work shall be completed, and the time frame for completion and conveyance. The Office will then provide the Contractor with a written schedule of the completion and conveyance activities associated with termination. Documents/materials associated with suspended activities shall be conveyed by the Contractor to the State of Indiana upon five days' notice from the State of Indiana. Upon completion of those remaining activities noted on the written schedule, the Contractor shall also convey all documents and materials to the State of Indiana upon five days' notice from the State of Indiana.

49. Environmental Standards.

If the contract amount set forth in this Contract is in excess of \$100,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 7606), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 C.F.R. Part 1532), which prohibit the use under non-exempt Federal contracts of facilities included on the EPA List of Violating Facilities. The Contractor shall report any violations of this paragraph to the State of Indiana and to the United States Environmental Protection Agency Assistant Administrator for Enforcement.

50. Lobbying Activities.

Pursuant to 31 U.S.C. § 1352, and any regulations promulgated thereunder, the Contractor hereby assures and certifies that no federally appropriated funds have been paid, or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative contract. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the Contractor shall

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complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

51. State Boilerplate Affirmation Clause.

I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the March 2008 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses:

- 11 – Confidentiality of State Information – Paragraph Deleted – and incorporated under Paragraph 37(C).
 - 33 – Payments – Subparagraph C –Paragraph added in its entirety.
 - 37 – Security and Privacy of Protected Health Information, Drug and Alcohol Abuse Patient Records, and Confidentiality of State Information – Paragraph added in its entirety.
 - 37.5 – Electronic Transaction Standards Compliance – Paragraph added in its entirety.
 - 45 – Prevention of Fraud and Abuse – Paragraph added in its entirety.
 - 46 - Assurance of Compliance with Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 and Title IX of the Education Amendments of 1972 – Paragraph added in its entirety.
 - 47 – Conveyance of Documents and Continuation of Existing Activity – Paragraph added in its entirety.
 - 48 – Environmental Standards - – Paragraph added in its entirety.
 - 50 – Lobbying Activities – Paragraph added in its entirety.
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THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

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Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

(Contractor:)

(Where Applicable)

By: _____
Printed Name: _____
Title: _____
Date: _____

Attested By: _____

Office of Medicaid Policy and Planning:

Indiana Office of Technology

By: _____ (for)
Patricia Casanova, Director of Medicaid

By: _____ (for)
Gerry Weaver, Chief Information Officer

Date: _____

Date: _____

Department of Administration

State Budget Agency

By: _____ (for)
Mark W. Everson, Commissioner

By: _____ (for)
Christopher A. Ruhl, Director

Date: _____

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

By: _____ (for)
Gregory F. Zoeller, Attorney General

Date: _____